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**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

JUN 19 2018

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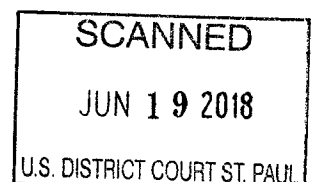
IN THE MATTER OF THE TAX)
INDENTEDNESS OF:)
)
Fireside Lounge & Supper Club LLC)
37540 Goodhue Avenue)
Dennison, MN 55018)
)
)

No. 18-MJ-484 FLN

**APPLICATION OF THE UNITED STATES
TO ENTER PREMISES TO EFFECT LEVY**

The United States of America, on the basis of the attached affidavit of Revenue Officer Krista Sullivan, respectfully applies to the Court, pursuant to 26 U.S.C. sections 6331 and 7402(a), for an order authorizing Revenue Officer Krista Sullivan and/or other employees, as designated by the Internal Revenue Service, who may be escorted by employees of the U.S. Treasury Inspector General for Tax Administration, to enter the premises located at 37540 Goodhue Avenue, Dennison, MN 55018, for the purpose of seizing the property of Fireside Lounge & Supper Club LLC as may be found therein, which is subject to levy by the United States in satisfaction of the outstanding federal taxes now due and owing by Fireside Lounge & Supper Club LLC together with interest and costs as allowed by law.

Jurisdiction is conferred upon federal district courts to make and issue in civil actions, writs and orders of injunction and such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws. 26 U.S.C. § 7402(a). A district court is vested with jurisdiction under



26 U.S.C. § 7402(a) to enforce levies of the Internal Revenue Service by summary, *ex parte* proceedings. *Matter of Carlson*, 580 F.2d 1365 (10th Cir. 1978); *United States v. First National City Bank*, 568 F.2d 853 (2d Cir. 1977); *United States v. Mellon Bank, N.A.*, 521 F.2d 708 (3d Cir. 1975)

Where a taxpayer refuses to pay his tax liabilities after notice and demand, a District Court has jurisdiction to issue an entry order pursuant to 26 U.S.C. § 7402(a) allowing other Service to enter premises in order to collect delinquent taxes. 26 U.S.C. § 7402(a); *Marshall v. Barlow's Inc.*, 436 U.S. 307, 322, n. 19, 98 S.Ct. 1816 (1978). An order of entry is to be issued upon application with supporting affidavit showing cause to enter, search for, and levy upon personal property in aid of summary collection of assessed and unpaid tax. *United States v. Shriver*, 645 F.2d 221 (4th Cir. 1981). Issuance of the order authorizing entry is to take place in a summary, *ex parte*, proceeding and is not to be converted into an adversary proceeding. *Matter of Campbell*, 761 F.2d 1181, 1186 (6th Cir. 1978); *United States v. Condo*, 782 F.2d 1502, 1504-06 (9th Cir. 1986); *United States v. Asay, Jr.*, 614 F.2d 655, 662 (9th Cir. 1980).

Submitted in support of this application is the affidavit of Revenue Officer Krista Sullivan. The affidavit establishes that assessments of tax, penalty, and interest have been made against Fireside Lounge & Supper Club, LLC for the 941 tax periods ending 06/30/2013, 09/30/2013, 12/31/2013, 06/30/2014, 09/30/2014, 12/31/2014, 03/31/2015, 06/30/2015, 09/30/2015, 09/30/2016, and 1065 tax period ending 12/31/2014, in the amounts of \$27,672.41, \$30,065.88, \$29,845.82, \$12,074.85, \$23,255.90, \$11,969.01, \$773.50, \$16,693.58, \$3,727.32, \$2,483.89, and \$4,965.44, respectively. Pursuant to

sections 6201, 6203, and 6303 of the Internal Revenue Code, notice and demand were made for the assessments was given to the taxpayer prior to or on the date that is 60 days after the date upon which each amount was assessed. Fireside Lounge & Supper Club LLC has neglected or refused to pay the full amount of the tax, penalty, and interest assessed within ten (10) days after notice and demand for payment, and this neglect or refusal continues. By reason of the taxpayer's neglect and failure to pay such tax, penalty, and interest within 10 days after notice and demand, a levy may be made under 26 U.S.C. 6331(d). There is now due and owing and unpaid with respect to such tax, penalty and interest, a total amount of \$193,288.98 (computed through March 9, 2018). These amounts include statutory additions. By reason of the assessments, a lien has arisen on all property and rights to property of Fireside Lounge & Supper Club LLC, as prescribed by sections 6321 and 6322 of the Internal Revenue Code.

A notice of intention to levy along with Collection Due Process rights, required by section 6331(d) and 6330 of the Internal Revenue Code, was provided to the taxpayer by certified mail to the taxpayer's last known address 06/19/2017, 06/19/2017, 06/19/2017, 11/17/2014, 03/10/2015, 06/10/2015, 07/14/2015, 11/17/2015, 12/05/2016, and 06/13/2017 for the Form 941 liabilities for the periods ending 06/30/2013, 09/30/2013, 12/31/2013, 06/30/2014, 09/30/2014, 12/31/2014, 03/31/2015, 06/30/2015, 09/30/2015, and 09/30/2016, respectively, and on 12/05/2016 for the Form 1065 liabilities for the period ending 12/31/2014. The taxpayer did not exercise its Collection Due Process rights on any of the tax periods.

Notice of Federal Tax Lien filings were filed with the Minnesota Secretary of State on 11/21/2014, 3/21/2015, 06/20/2015, 12/04/2015, 07/09/2016, 12/16/2016, 6/210/2017, and 6/29/2017 for the Form 941 liabilities for the periods ended 6/30/2013, 9/30/2013, 12/31/2013, 6/30/2014, 9/30/2014, 12/31/2014, 3/31/2015, 6/30/2015, 9/30/2015, 9/30/2016, and Form 1065 liability for period ended 12/31/2014. A Notice of Federal Tax Liability was also filed in Goodhue County on 05/8/2015 for the Form 941 liability for the period ending 6/30/2014.

Taxpayer is an LLC operating as a restaurant and bar that also provides catering services and sells off sale liquor. Taxpayer reports income taxes in the form of a partnership, which is owned 50% each by husband and wife Joseph Amy and Michele Amy. The taxpayer rents the business premises, located at 37540 Goodhue Avenue, Dennison, MN 55018, from M J Properties of Dennison Inc., EIN 68-0527294, which is an S Corporation owned 100% by Michele Amy. The taxpayer estimates obtaining \$73,600 of income in the month of May, and approximately 46% of the taxpayer's income is in cash. According to Revenue Office Sullivan, restaurants will typically keep cash locked up in a safe on premises to hold until bank deposits can be made.

The assets located within the premises that are the subject of seizure will be unopened inventory of liquor, beer, wine, non-alcoholic drinks, cigarettes, and cash or other negotiable instruments, as may be found in cash registers or within any safes located in the taxpayer's office in the basement of the building. This seizure will take place over the Memorial Day weekend, when inventory is expected to be high.

The IRS has verified ownership of the above-listed property from Revenue Officer Sullivan conducting field visits to view the assets and meet with the taxpayer and representatives on 9/28/2016 and 11/9/2017. Revenue Officer Sullivan also called the business on May 10, 2018, and checked the website to confirm that the business is still open and operating.

Seizure is the only remaining viable solution to collect the amounts owed to the United States. Alternative remedies including third-party levies have not been successful and the taxpayer has refused to provide financial information to the extent that it would allow for consideration of any collection alternatives such as an installment agreement. This is the third successive entity run by the taxpayers, with unpaid taxes for all three entities totaling \$600,000 over a period of 9 years.

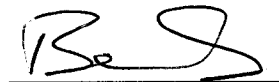
In September 9, 2017 IRS Revenue Officer Krista Sullivan requested permission to enter the premises for the purpose of levying property under section 6331 of the Code, and was verbally denied consent to enter by Joseph Amy. As a result, the IRS has not been able to secure Fireside Lounge and Supper Club LLC's consent to enter in order to seize property for the purpose of satisfying its outstanding tax liabilities.

WHEREFORE, the United States prays that an order be issued permitting Revenue Officer Krista Sullivan and/or other employees, as designated by the Internal Revenue Service, who may be escorted by employees of the U.S. Treasury Inspector General for Tax Administration, to enter the premises located at 37540 Goodhue Avenue, Dennison, MN 55018, for the purpose of seizing property of Fireside Lounge and Supper Club LLC, as may be found therein for the purpose of satisfying Fireside Lounge and Supper Club LLC's outstanding tax liabilities.

Dated: May 24, 2018

GREGORY G. BROOKER
Acting United States Attorney

By:



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